

April 28, 2006

OIL AND GAS DOCKET NO. 7B-0243716

ENFORCEMENT ACTION AGAINST FRONTIER RESOURCES, INC. (OPERATOR NO. 287200) FOR VIOLATIONS OF STATEWIDE RULES ON THE MOSELEY-TOLLIVER LEASE, WELL NO. 1, (RRC GAS ID NO. 137645), STEPHENS COUNTY REGULAR (GAS) FIELD, STEPHENS COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Susan German, Staff Attorney

FOR RESPONDENT:

Mahlon DeBard, Agent
Lloyd Muennink, Attorney

FOR OBSERVER:

L. Kyle Yeates, Landowner

MOVANT:

Railroad Commission of Texas

PARTY:

Frontier Resources, Inc.
Frontier Resources, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	October 28, 2005
NOTICE OF HEARING:	February 17, 2006
HEARING CONVENED:	March 23, 2006
RECORD CLOSED:	April 24, 2006
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	April 28, 2006
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 14, the Moseley-Tolliver Lease, Well No. 1, (RRC Gas ID No. 137645), Stephens County Regular (Gas) Field, Stephens County, Texas;
2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rule 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said lease and well;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Mahlon DeBard appeared on behalf of respondent, Frontier Resources, Inc. (hereinafter "Frontier" or "respondent"). The landowner, and partial mineral interest owner, L. Kyle Yeates, appeared as an observer, and also testified as a witness called by Enforcement. The Enforcement Section's hearing file was admitted into evidence.

At the hearing, Frontier requested additional time to plug the well, advising that it had retained a plugger. The examiner agreed to leave the record open for 30 days to allow Frontier the opportunity to late file exhibits verifying that the well was properly plugged. On April 13, 2006 Frontier requested through its attorney that the record remain open an additional two weeks, asserting that Frontier was obtaining ratification of the existing lease agreement and would restore the well to production. Enforcement opposed the request arguing that it was solely interposed for further delay. The examiner advised the parties that the record was closed on April 24, 2006.

The staff recommended that Frontier be ordered to properly plug the well and to pay an administrative penalty of \$2,000 for one violation of Statewide Rule 14(b)(2). The examiner agrees with the recommendation regarding the administrative penalty, and recommends that it be required to plug the well or otherwise place the well in compliance with Statewide Rule 14(b)(2).

DISCUSSION OF THE EVIDENCE

Commission records show the most recent approved Commission Form P-5 (Organization Report) for respondent was filed on April 13, 2006. Respondent deposited \$25,000 with the Commission as its financial security at the time of its last renewal. Ellsworth M. Jones is listed as Frontier's president. Respondent is listed as the operator of 8 wells with a total depth of 34,349 feet.

Frontier was recognized as the operator of the Moseley-Tolliver (RRC Gas ID No. 137645) Lease, Well No. 1, upon the Commission's approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on April 12, 1991.

Commission inspection reports dated March 10, 2005, March 18, 2005, March 30, 2005, April 13, 2005, May 3, 2005, May 17, 2005, November 15, 2005 and February 17, 2006 found the well was shut-in. The most recent inspection on February 17th observed that all valves on the well were closed. There was no surface production equipment on the lease and the access road was overgrown with vegetation. Commission records report no production from the well from at least January 1, 1993. A request for a plugging extension was denied by the Commission on March 19, 2003 for the failure to show a continuing right to operate the well. Subsequent denials of plugging extensions for the well also note the failure to file a Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old).

On September 19, 2005, Frontier submitted a copy of a September 1975 lease with a claim that the lease remained valid due to the payment of shut-in royalties over a 25 year period. On October 25, 2005, the Hearings Section of the Office of General Counsel ruled that the evidence submitted did not establish a good faith claim of a continuing right to operate.

Finally, Enforcement offered the testimony of Mr. Yeates, the owner of 50% of the mineral interest, and an oil and gas operator. Mr. Yeates testified that the September 1975 lease has terminated. Mr. Yeates will not agree to a new lease and wants the well plugged.

Accordingly, Enforcement contends that the well is currently in violation of Statewide Rule 14(b)(2). The estimated cost to plug the well is \$6,800. Enforcement contends that the lengthy history of inactivity for the well justifies the entry of an order to plug the well and an administrative penalty of \$2,000.

Frontier acknowledges that it was the operator of the well and that the well has not produced since 1993. Frontier's representative indicated that the president of the company is elderly and does not address the day to day operations of the company. At the hearing, it was asserted that a plugging contractor had been retained and the well was scheduled to be plugged with two weeks.

Frontier's counsel subsequently asserted that shut-in royalty payments to the mineral interest owners under the September 1975 lease agreement were accepted by all of the mineral interest owners over a 20 year period. Counsel contends that the acceptance of the payments constitutes a novation contract that sustains all rights of Frontier under the original lease agreement. Counsel finally asserts that the well can be restored to production, based on the Commission Form G-1 (Gas Well Back Pressure Test, Completion or Recompletion Report, and Log) conducted on May 30, 1979 showing "good bottom hole pressure."

After the record was closed in this docket, counsel for Frontier forwarded documents purporting to be ratifications of the September 1975 lease agreement by the original lessors who reportedly still own a portion of the mineral interest. A copy of a mechanical integrity test conducted on April 14, 2006 was also filed.

APPLICABLE AUTHORITY

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted. For Form P-4s filed prior to September 1, 1997, the operator, for purposes of plugging liability, is presumed to be the person who assumed responsibility for the physical operation and control of a well as shown on the approved Form P-4 designating that person as operator.

EXAMINER'S OPINION

It is uncontested that the well is currently in violation of Rule 14. Frontier also admits its responsibility for the well.

Frontier reneged on its representation that the well would be plugged. However, it alternatively offers that it has secured the right to operate the well and will bring it in compliance for the ultimate purpose of restoring the well to production.

Commission records show that the well has not reported any production for at least 13 years. A pressure test was apparently recently performed, but has not yet been approved by the District Office. Finally, the late filed documents may establish a right to operate the well, and the Commission is not empowered to adjudicate the competing claims of the mineral interest owners concerning the validity of the ratification agreements. Accordingly, the examiner recommends that Frontier be ordered to plug the well or otherwise place it in compliance with Commission Rule 14. Frontier should also pay an administrative penalty of \$2,000.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, Frontier Resources, Inc. (“Frontier” or “respondent”) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. Frontier appeared at the hearing and presented evidence.
2. The most recent approved P-5 for respondent was filed on April 13, 2006. Respondent deposited \$25,000 with the Commission as its financial security at the time of its last renewal. Ellsworth M. Jones is listed as Frontier’s president. Respondent is listed as the operator of 8 wells with a total depth of 34,349 feet
3. Frontier was recognized as the operator of the Moseley-Tolliver (RRC Gas ID No. 137645) Lease, Well No. 1, upon the Commission’s approval of the Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) on April 12, 1991.
4. Well No. 1 on the Moseley-Tolliver (RRC Gas ID No. 137645) Lease is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspection reports dated March 10, 2005, March 18, 2005, March 30, 2005, April 13, 2005, May 3, 2005, May 17, 2005, November 15, 2005 and February 17, 2006 found the well was shut-in.
 - b. Commission records report no production from the well since January 1, 1993.
 - c. The most recent inspection of February 17, 2006 observed that all valves on the well were closed. There was no surface production equipment on the lease and the access road was overgrown with vegetation.
5. No plugging extension was in effect for Well No. 1 on the Moseley-Tolliver (RRC Gas ID No. 137645) Lease from March 19, 2003 through the date of issuance of the proposal for decision.
 - a. Frontier failed to provide the Commission with evidence of a good faith claim of a continuing right to operate when requested in 2003.
 - b. The Commission canceled the plugging extension for Well No. 1 on the Moseley-Tolliver (RRC Gas ID No. 137645) Lease obtained through Frontier’s filing of blanket financial assurance on March 19, 2003.
 - c. Frontier failed to submit the required Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old) in 2004 and 2005.

6. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
7. The estimated cost to plug the subject well is \$6,800.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Frontier is the operator of the Moseley-Tolliver (RRC Gas ID No. 137645) Lease, Well No. 1, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Frontier has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Moseley-Tolliver (RRC Gas ID No. 137645) Lease, Well No. 1.
5. Well No. 1 on the Moseley-Tolliver (RRC Gas ID No. 137645) Lease is not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. Well No. 1 on the Moseley-Tolliver (RRC Gas ID No. 137645) Lease has been out of compliance with Rule 14 from March 19, 2003 to the present.
7. Ellsworth M. Jones as Frontier's president is in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violation of Commission Rule 14 committed by respondent.
8. The violation of Commission Rule 14 committed by respondent is related to safety and the control of pollution.
9. As an officer in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Ellsworth M. Jones and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.

10. The documented violations committed by Frontier are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Frontier Resources, Inc. to plug or otherwise place in compliance with Statewide Rule 14(b)(2), Well No. 1 on the Moseley-Tolliver (RRC Gas ID No. 137645) Lease, and pay an administrative penalty of \$2,000.

Respectfully submitted,

Mark Helmueller
Hearings Examiner